

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI
COMPANY APPEAL(AT) NO.216 OF 2018

(ARISING OUT OF ORDER DATED 23.4.2018 PASSED BY NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI (COURT NO.IV) IN APPEAL NO.116/252/ND/2018).

IN THE MATTER OF:

Kanodia Knits Pvt Ltd
 35, North Basti Harphool Singh,
 Sadar Thana Road,
 Delhi.

Before NCLT**Before NCLAT**

Petitioner

Appellant

Vs

Registrar of Companies
 Delhi & Haryana
 4th Floor, IFCI Tower
 61, Nehru Place,
 New Delhi

Respondent

Respondent

For Appellant:- Sh Abhishek Anand, Advocate.

For Respondents: - Mr. P.S. Singh, Advocate for Ministry of Corporate Affairs.

JUDGEMENT
(28.01.2019)

A.I.S. CHEEMA, J:

This appeal has been filed against the impugned order dated 23rd April, 2018 passed by the Learned National Company Law Tribunal, New Delhi Bench, (Court No.IV) (NCLT in short) in Appeal No.116/252/ND/2018.

2. The name of the appellant company was struck off by the Registrar of Companies, after STK 5 Notice dated 13.6.2017 (Page 92) as the company had not been carrying on business or nor in operations for two immediately preceding financial years and the company had not obtained the status of

dormant company under Section 455 of the Companies Act, 2013 (Act in brief).

3. The appellant filed the appeal before NCLT (Page 201) claiming that the company had two directors who were also the shareholders. The only shareholders and directors are stated to be Mr. Ajay Kanodia and his wife Ms Anjana Kanodia and they held 100% shareholding. The appellant before NCLT claimed that the appellant had not been served with Notice under Section 248(1) of the Act and the Registrar of Companies (ROC) had proceeded to issue notice under Section 248(5) of the Act and the name of the appellant company was then struck off. The appellant claimed that the company had been doing business and was in operation and audited financial statements for the year financial year 2012-13 to FY 2016-17 were filed.

4. The NCLT heard the appellant and received the reply filed by ROC. The NCLT considered the material placed before it which included the above stated balance sheet, bank statement for the period March 2013 to December, 2013 which had been filed. The appellant placed before the NCLT purchase orders relating to April, 2016 to March, 2017 and sale invoices for similar period. Copies of Income Tax Returns for financial year 2016-18 and 2017-18 were also placed before the NCLT. The NCLT considered the case put up before it as well as the documents and came to the conclusion that the appellant company failed to prove that it was carrying on business or was in operation when its name was struck off and dismissed the appeal which was filed before it. Against the dismissal the present appeal has been filed and the same claim is put up by the appellant referring to the documents which were filed before NCLT.

5. The ROC filed reply before us and affidavit of ROC claims that the appellant company had not filed financial statements from the financial year ending 31.3.2004 till 31.3.2011. The balance sheet and annual return was filed for the year ending 31.3.2012 and thereafter again there was no filing and according to ROC, STK-1 notice was duly issued to company on 21.3.2017 and the copy of the same has been filed. According to the ROC the appellant did not respond to the notice and further steps to strike off the company were taken. According to ROC, later on public notice as per Section 248(5) was issued.

6. Learned counsel for appellant claims that in the reply filed before NCLT, copy of which has been filed with Diary No.8597, a copy of STK-1 Notice was not produced. Thus he wants the copy of the notice now filed to be ignored. According to him no proof of service has been filed. He relied on the reply of ROC in NCLT where the ROC stated that appellant may be directed to prove that the company was carrying on business or in operation and that it is just that the name of the company should be restored.

7. We have no reasons to doubt the affidavit filed before us by the ROC attaching copy of the Notice dated 21.3.2017 as per STK 1 and the affidavit which claims that such notice was issued to the appellant company as per the official records of the ROC. Apart from this the appeal filed before NCLT itself admitted that notice under Section 248 was published in the official gazette, copy of notice STK 5 at Page 92 also gave opportunity to the appellant to move the ROC if it was aggrieved by the proposed removal of the company name. After such notice the appellant made no effort to move the ROC and put up its case that the appellant was in business or in operation when the

name was struck off. Thus we are not accepting the contention that opportunity to the appellant was not given. Regarding the merits of the claim that the appellant was in business or in operation the documents filed before us include two income tax returns at Annexure 11 for the assessment years 2016-17 and 2017-18. The return for 2016-17 claims that the gross total income of the year was Rs.504 and the income tax return for 2017-18 claims that the gross total income was Rs.1473/-. Counsel for the appellant wanted to state that the invoices at Pages 177 to 182 relate to purchaser orders. If these invoices are seen, the seller is shown as Kanodia Hosiery Mills and buyer is Kanodia Knit(P) Ltd. If the address of the seller is perused in these invoices it is 35, North Basti Harphool Singh, Sadar Thana Road, Delhi. This is the same address of the appellant, Kanodia Knits Pvt Ltd, also. How much weight such documents should be given is a foregone consequence. Some more purchase orders are shown which are at pages 171 to 176. These documents claim to be sale invoices between 22nd October, 2015 to 8th March, 2016. The vendors appears to be Shri Hosiery Udyog. These documents are for the financial year 2015-16 for which the assessment year would be 2016-17. The income tax returns at page 183 shows gross total income as Rs.504/- We are not impressed by such documents to claim that the company was in business or in operation. Perusal of the impugned order shows that the NCLT considered the documents placed before it and made the following observations regarding these documents;

“11. The Audited Balance Sheets of the Company are on record for the years March 2013 to March 2017. During the year 2017 at time of being struck off i.e. 13.6.2017 the Company had no

employees and no salary was paid. The profits after tax deduction is Rs.963/- only. The audited balance sheet of the Appellant Company also does not reflect any bank balance for the said year. The profit earned during the year 2015-16 as per balance sheet is only Rs.294/- and no salary payment or bank balance is shown during the years 2015-17. There are no purchase orders or sale invoices beyond March 2017. Thus during the period of striking off the name of the Company in June, 2017 there is no record to show the business in operation.

12. However, the company has not put on record the Bank Statements of the Company for the period when the name of the company was struck off. The bank statements submitted are for the period from 1st March, 2013 to 31st December, 2013. There are no bank statements brought on record to show any transactions during the said period when the company's name was struck off and the company claimed that the account was not functioning from 2013 since transactions were mostly carried out in cash, for small amounts.

13. The Income Tax returns for the assessment year 2016-17 and 2017-18 put on record reflect the Total Income for the year 2016-17 as Rs.500/- and the Tax with Interest payable as Rs.172/- Total Income for the assessment year 2017-18 is Rs.1470/- and the Tax with Interest payable is Rs.439/- respectively.

14. Thus there are no convincing documents on record to establish that the Company was doing business or in actual

operation when its name was struck from the Register of the Registrar of Companies. Therefore, it could be said that the Company was non-operational at the relevant period of striking off its name in June, 2017.

15. The Respondent ROC in its report has stated that it has no objection if the name of the Company is restored in the Register of Companies on the undertaking that the Company be directed 'to prove' that it was carrying on business or was in operation with further direction to file financial statements with appropriate filing fees and additional fees as leviable.

16. Provisions pertaining to restoration of the Company u/s 252 are to be applied. Sub-section 3 of Section 252 contemplates that one of the three conditions are required to be satisfied before exercising jurisdiction to restore company to its original name on the register of the ROC namely

(i) That the company at the time of its name was struck off was carrying on business.

(ii) or it was in operation.

(iii) or it is otherwise just that the name of the company be restored on the register.

17. Applying the aforesaid principles to the facts of the present case, it can be seen from the audited balance sheets, the bank Statements and all other documents brought on record by the Appellant Company that it was neither carrying on any business

nor in operation when its name was struck off by the register of companies.

18. As a sequel to the aforesaid discussion, it is inferred that there is no just reason to restore the Company's name on Register of Companies."

8. Having heard the Learned counsel for the appellant, and seeing the documents when we have considered the above findings and observations of the Learned NCLT, we do not find any reason to differ from NCLT. There is no substance in this appeal.

9. The appeal is rejected. No order as to costs.

(Mr. Balvinder Singh)
Member (Technical)

(Justice A.I.S. Cheema)
Member (Judicial)

New Delhi

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